

IN THE CIRCUIT COURT OF SCOTT COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,)
JEREMIAH W. (JAY) NIXON,)
ATTORNEY GENERAL OF)
MISSOURI and THE MISSOURI)
DEPARTMENT OF NATURAL)
RESOURCES,)

Plaintiff,)

v.)

Case No. _____

MILLENNIUM ENVIRONMENTAL OF)
MISSOURI, INC.,)

Defendant.)

SERVE: C T Corporation System)
120 South Central Ave.)
Clayton, Missouri 63105)

PETITION FOR INJUNCTIVE RELIEF, FEES
AND CIVIL PENALTIES

COMES NOW the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, Attorney General of Missouri, and the Missouri Department of Natural Resources, and for its Petition, states:

ALLEGATIONS PERTAINING TO ALL COUNTS

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General for the State of Missouri.

2. The Missouri Department of Natural Resources (Department) is the duly authorized

state agency created by the Omnibus State Reorganization Act of 1974, formerly Appendix B, RSMo 1978 and now Chapter 640, RSMo, to administer programs relating to environmental control and the conservation and management of the natural resources of the State of Missouri.

3. Millennium Environmental of Missouri, Inc. (Millennium) was a Missouri corporation with its principal place of business in Missouri located at 3100 Industrial Fuels Drive, Scott City, Scott County, Missouri 63780-9789.

4. Millennium operates a hazardous waste storage and treatment facility at the Scott City location (the facility). On or about January 4, 1994, the Department issued permit number MOD980632954 (permit) to a company named Industrial Fuels and Resources, Inc., which later transferred the permit to ERD-MO authorizing the operation of the hazardous waste storage and treatment facility pursuant to the requirements of the state Hazardous Waste Management Law, section 260.350, *et seq.*, RSMo, and its implementing regulations.

5. On or about June 29, 1999, Millennium purchased from ERD-MO substantially all of the assets of ERD-MO, including without limitation, the permit, the transfer of which was approved by the Department on September 29, 1999.

6. On or about May 4, 2000, the Secretary of State's Office administratively dissolved Millennium due to its failure to file a correct annual report. A copy of the Notice of Dissolution is attached hereto as Exhibit 1 and is incorporated herein by this reference.

7. Millennium accepts a variety of hazardous wastes at the facility from off-site sources for storage, treatment, and brokering to other facilities. Millennium has continued to accept hazardous waste at the facility despite the fact that the company has been administratively dissolved.

8. On or about August 31, 2000, Millennium applied for a modification to the permit.

Upon initial review of the application, the Department notified Millennium in a letter dated September 11, 2000, that the application was incomplete for the purposes of public participation and technical review. After Millennium provided more information in a letter dated December 4, 2000, the Department notified Millennium that the application was technically deficient and was incomplete for purposes of review because certain documents had not been provided. Copies of the letters dated August 31, 2000, September 11, 2000, December 4, 2000, and April 19, 2001, are attached hereto as Exhibits 2 through 5 and are incorporated herein by this reference.

9. On or about January 10, 2000, the Department approved a request from Millennium for temporary authorization to allow Millennium to store hazardous waste at the facility in roll-off containers and to process hazardous waste in Warehouse Number 1 while Millennium prepared an application to modify Permit No. MOD980632954. On January 22, 2001, the Department approved an additional 180 days of temporary authorization. The temporary authorization expires on July 21, 2001, and regulation 10 CSR 25-7.270(1), incorporating 40 CFR 270.42(e) by reference, does not allow additional extensions. Copies of the letters dated January 10, 2000, and January 22, 2001, are attached hereto as Exhibits 6 and 7 and are incorporated herein by this reference.

10. Millennium engages in the management of hazardous waste that includes, but is not limited to, ignitable hazardous waste, corrosive hazardous waste, and toxic hazardous waste. The management of these materials is a hazardous activity, which is pervasively regulated because of that hazardous nature.

11. Because Millennium stores and blends hazardous waste at the facility, Millennium must clean up the site when the facility closes. The Missouri Hazardous Waste Management Law, section 260.350, *et seq.*, RSMo 2000 requires that a hazardous waste facility maintain a financial

assurance instrument to ensure the state has funds available to conduct the proper clean up or closure of the facility in the event that the owner/operator of the facility does not close the facility according to the facility closure plan. Millennium uses an insurance policy in the amount of \$505,944.00 as its financial assurance closure instrument.

12. From June 1999 through February 2001, representatives of the Department repeatedly inspected the facility. During these inspections, inspectors documented that the facility was not and is not complying with the terms of the permit or the Missouri Hazardous Waste Management Law or Regulations. The Department inspectors issued Notices of Violation (NOV) to Millennium as a result of the inspections. Violations documented included, but were not limited to, storage of hazardous waste in a non-permitted area; failure to construct a fire suppression system as required by the permit; storing lab packs despite the fact that the permit did not authorize the receipt or storage of lab packs; storing incompatible wastes together or in incompatible containers; and failure to store hazardous wastes in containers in good condition. The NOVs issued included, but were not limited to NOV numbers 4815; 5537; 5539; 5332; 5338; and 5261. Copies of the inspection reports, including the NOVs, are attached hereto as Exhibits 8 through 15 and are incorporated herein by this reference.

13. On or about April 4, 2001, representatives of the Department inspected the facility. The inspectors noted that the facility was storing approximately 15,010 more gallons of hazardous waste than the permit allows. The inspectors noted open and leaking containers and aisle space that was not adequate to allow a response to hazardous waste releases. In addition, the manager of the facility did not have access to funds to respond to environmental emergencies. A copy of the inspection report, including the NOV, is attached hereto as Exhibit 16 and is incorporated herein by

this reference.

14. Because the storage of hazardous waste did exceed the permitted capacity at the facility, representatives of the Department analyzed Millennium's financial assurance instrument to determine if it is adequate to properly close the facility. Although Millennium does not exceed its permitted capacity at this moment, the analysis estimates that closure of the facility will cost approximately \$54,896.00 more than is available from the current financial assurance instrument because the warehouse at the facility will require more cleaning than was estimated in the most recent permit application. If the financial assurance instrument (the insurance policy) is not adequate to close the site, then cleanup of the site by the Department using taxpayer dollars may be required.

15. According to an inventory of hazardous waste stored on site provided by Millennium on or about May 17, 2001, Millennium was not exceeding its permitted storage capacity at that time. However, Millennium is storing hazardous wastes at or near full permitted capacity, and a relatively small shipment of hazardous waste to the site would once again put the facility over permitted capacity.

16. On December 14, 2000, and pursuant to sections 260.370.2 and 260.390.4, RSMo 2000, the Department sent Millennium an invoice for commercial hazardous waste facility compliance inspection fees. The fee of \$9,800.00 was due by January 15, 2001. When Millennium did not pay the fee, the Department sent Millennium a second statement on February 15, 2001, indicating that in addition to the fee of \$9,800.00, Millennium also owed a penalty of \$1,470.00 and interest of \$112.70. Copies of the original invoice and the subsequent statement are attached hereto as Exhibits 17 and 18 and are incorporated herein by this reference.

17. On November 20, 2000, and pursuant to section 260.395.7(7), RSMo 2000, the

Department sent Millennium an invoice for engineering review costs incurred by Department staff who reviewed the application for the proposed modification of the permit. The payment of \$4,377.75 was due within 30 days of Millennium's receipt of the transmittal letter. When the payment was not received, the Department issued a Letter of Warning on January 5, 2001, and Notice of Violation Number 5405 on January 30, 2001. Copies of the invoice, the Letter of Warning and the Notice of Violation are attached hereto as Exhibits 19, 20, and 21, respectively, and are incorporated herein by this reference.

18. On or about March 19, 2001, the Department received a check from Millennium dated March 15, 2001, in the amount of \$14,177.75, apparently to pay the commercial hazardous waste facility compliance inspection fees and the engineering review costs. However, when the Department tried to cash the check, the Suffolk County National Bank returned the check because Millennium's account did not hold sufficient funds to honor the check.

19. On or about March 29, 2001, the Department sent Millennium an invoice for engineering review costs in the amount of \$3,110.88. The invoice was for costs incurred by the Department in the second quarter of fiscal year 2001. Recovery of the costs is authorized by section 260.395.7(7), RSMo and 10 CSR 25-12.010.

20. On or about May 31, 2001, the Department sent Millennium a Letter of Warning because Millennium had still not paid the costs described above in paragraph 19. As of the date of this petition, Millennium has not paid the engineering review costs incurred by the Department during the second quarter of fiscal year 2001.

21. On or about March 29, 2001, Millennium personnel notified the Department that electric service for the facility had been disconnected. Although the electric service was restored

within a few days, the Department contacted Ameren UE, electric service provider for Millennium, to request information on the service disconnection. Ameren UE responded in a letter dated May 1, 2001, that service to ERD Corporation was disconnected on March 29, 2001, because the electric bills for the facility had not been paid. Electric service was restored to the facility on March 30, 2001, because Ameren UE received a check for the amount due. But when Ameren UE was notified that the account on which the check was written did not hold sufficient funds to honor the check, Ameren UE again disconnected electric service to the facility on or about April 26, 2001. As of the date of this petition, Ameren UE has not restored electric service to the facility and has in fact disconnected the natural gas service at the facility.

22. In a memorandum dated April 27, 2001, the Department's Hazardous Waste Permits Section indicates that the electric service disconnection will affect the fire suppression system, the alarm system, the communications systems and the hazardous waste processing equipment.

23. On April 17, 2001, the Department issued Notice of Violation Number 5252 to Millennium because the fire suppression system that Millennium installed did not meet the requirements of the permit or the temporary authorization. Further, Millennium has not modified its permit when the emergency coordinators and facility manager have been replaced or when the facility operator changed. A copy of Notice of Violation Number 5252 and the letter conveying it to Millennium are attached hereto as Exhibit 22, and are incorporated herein by this reference.

24. As of the date of this petition, Millennium has not paid either the commercial hazardous waste facility compliance inspection fees that were due on January 15, 2001, or the engineering review costs that were due on or about December 20, 2000. Defendant Millennium now owes both penalties and interest on the amounts due.

25. On or about April 2, 2001, all but approximately two of Millennium's employees resigned. Currently, Millennium does not have enough employees at the facility to properly manage the hazardous waste on-site.

26. As of the date of this petition, Millennium remains at or near capacity for the amount of hazardous waste it may store at its facility.

COUNT I

INJUNCTIVE RELIEF

27. Plaintiff alleges, and incorporates herein by this reference, the allegations contained in paragraphs 1 through 26 of this Petition as though fully set forth herein.

28. Should defendants fail to properly manage the hazardous waste stored at the facility and continue to fail to properly manage the hazardous waste stored and/or treated at the facility, the people of the State of Missouri will be irreparably harmed and damaged in amounts incapable of being ascertained.

29. This Court has jurisdiction over the subject matter and the parties pursuant to §§ 260.425 and 260.240, RSMo.

30. Venue is proper in this Court in that the principal place of defendants's business is in Scott County, Missouri, and the alleged violations occurred in and are occurring at defendants' facility, which is located in Scott County, Missouri.

31. The unlawful acts of defendant are of such continuous nature, and with such conscious disregard for the protection of the people and natural resources of the state, that the plaintiff believes that the Missouri Hazardous Waste Management Law, § 260.350 et. seq., RSMo and its implementing regulations, will continue to be violated by defendant unless defendant is

restrained by this Court.

32. Defendant has failed to pay the commercial hazardous waste facility compliance inspection fees in violation of sections 260.370.2 and 260.390.4, RSMo 2000, and the engineering review costs in violation of section 260.395.7(7), RSMo 2000.

33. Defendant does not have sufficient monetary or employee resources to operate the facility in compliance with the permit and the law, which is a violation of sections 260.395 and 260.425, RSMo 2000.

34. Plaintiff has no remedy at law, and suit for injunctive relief is authorized pursuant to §§ 260.425 and 260.240, RSMo.

COUNT II
(CIVIL PENALTIES)

35. Plaintiff alleges, and incorporates herein by this reference, the allegations contained in paragraphs 1 through 34 of this Petition as though fully set forth herein.

36. Plaintiff does not have an adequate remedy at law, and suit for civil penalties is authorized by section 260.425, RSMo 2000.

WHEREFORE, plaintiff prays that this Court grant it the following relief:

A. As to Counts I and II, a finding that all facts as alleged in paragraphs one through thirty-six are true and correct and have occurred or are still occurring.

B. As to Counts I and II, a finding that the violations as alleged above in paragraphs one through thirty-six have occurred and are continuing to occur.

C. For Count I, an order for a preliminary and permanent injunction directing that defendant :

(1) establish twenty-four hour a day, seven days a week staffing at the facility and provide said staff with communication devices allowing them to contact local emergency response agencies and the Department in the event of a hazardous waste release or other emergency at the facility;

(2) not accept any additional hazardous or solid waste at the facility;

(3) remove all hazardous waste stored on-site, including hazardous waste stored in roll-off containers, to another permitted hazardous waste treatment, storage or disposal facility;

(4) pay all commercial hazardous waste facility compliance inspection fees and engineering review costs due to the Department;

(5) close the facility according to the Department-approved closure plan, which plan is included in the permit.

D. As to Count I, an order for an injunction directing that following completion of the closure, the Part I of the permit be revoked.

E. As to Count I, an order for a preliminary and permanent injunction directing that, after July 21, 2001, defendant not store hazardous wastes in roll-off containers or process hazardous waste in Warehouse Number 1.

G. As to Counts I and II, for all plaintiff's costs incurred in bringing this action.

H. As to Count II, an order assessing civil penalties not to exceed \$10,000.00 per day or part thereof that a violation occurred or continues to occur.

I. For any and all other further relief that this Court deems just and proper.

VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF Cole)

I, Kathy Flippin state that the facts as alleged in this document are true and accurate to the best of my knowledge and belief.

Kathy Flippin

Subscribed and sworn to before me this __ day of _____, 2001.

Notary Public

My Commission Expires:_____.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
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